G. R. S. IX-5]

Previous references.

Cls. 3 – 1872 Cls. 10-1879 1879
" 5 – 1873 ~~1879~~.
" 3 – 1876
" 4 – 1876 (Courts)
" 19 – 1878

Later references.

Cls. 12 – 1879
" 3 – 1881

File No. 11 of 1879

Serial Nos. 1 – 5

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 — 5

Major ~~Part~~ B for 22nd July 1880

SUBJECT.

Instructions relative to the Public Prose-cutors engaging in Private Criminal Practice

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Indexed

To

Serial No.

W. J. Cunningham Capt

Secretary to the Chief Commissioner

From Nepean Smith,

Public Prosecutor, Nundydroog &c

Sir

I have the honor to bring to your notice that on Monday last in a judgment in a criminal case, the Ameildar of Unikul versus Timmiah & 13 others, my right to conduct the defence in a purely magisterial case and not within the cognizance of the Sessions Court has been brought into question by Mr Syud Nissurodeen the 1st Class Magistrate. The prosecutor was the Ameildar Abdool Azeez & the case was brought under sect 145 and 188 I. P. Code and when I was retained, the summons did not shew that there was so as it was headed Cuchanna & 13 others Vs Timmiah and 13 others and only transpired at the hearing that the complainant was the Ameildar, the naming of the others being ascribed to a clerical error. My services were not applied for, but on my appearing as simply Advocate for the defence it was objected to.

Up to the present time no such objection has been raised in any Court although I have continued to practice in Magisterial cases on many occasions. As a matter of fact the cases wherein the services of the Govt Prosecutor are applied for hardly average one per month in original prosecutions, so that if the present objection be admitted, I should be shut out of all private criminal practice, which is in-

In the Court of the 1st Grade 1st Division
Bangalore District
Criminal Case No. 36. of 1880.

Deposition of Abdul Azeez 1st witness for
Prosecution. Sworn.

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* * *

Here the 1st witness objects Mr. R. Smith being engaged in this case for defence, he being a Government prosecutor. Mr. Smith in reply states that he is at perfect liberty to engage himself in any Criminal case but serious, that he takes up any other case if ordered by the District Magistrate, but he is paid for it and that as in this case it is not likely that the District Magistrate will order him to take up for Government he is at liberty to appear in this case.

The Court over rules the objection under the circumstances.

* * *

Signed/Syed Hasanoodeen
Magistrate 1st Class

9th June 1880.

"Extract"

considerably more remunerative than carried on my appointment no such prohibition was made

In the case above quoted, the parties numbered were fined each Rs 25, so that no appeal would lay, yet Mr Syud Nusseroodeen, the plea that I should be debarred from all private criminal practice, as it is possible that though not employed by Govt in the original criminal Court, my services might be required in appeal. In the Judl Commissioners Court I have more than once appeared for private individuals in criminal appeals.

To bar a public prosecutor on a salary of Rs 150 only and where sometimes the average fees each case at Sessions not Rs 10 per case as happened in the present month where 16 cases were tried, of which few were defended by counsel, would deprive him of a great part of his income, as the average rate of fees in Magisterial cases is from 50 to 100 Rupees & more.

I may here mention that as a matter of fact I never take up a defence, until I ascertain that Govt do not move in the matter and I would beg to observe that in any such exceptional cases as that mentioned by Mr Syud Nusseroodeen it would be open to the Court whose conviction was to be sustained to appoint any other Advocate to appear on their behalf, a power which has already been declared to be vested in a District Magistrate.

It is quite inapplicable to me, why in the present case, my appearance was objected

to, as if I had not appeared, some other Advo-
cate probably more able than myself would have
been employed.

It is perhaps allowed me to say that in the
case in question I had in the course of my duty
to protest against several irregularities, which
will be brought to the notice of the Jud. Comr

I would respectfully beg that the present
question may be laid before the Chief Comr
for his consideration

I have the honor to be
Sir
Your most obedt Servt
Nepean Smith
Pte Prosecutor
Mundy drove Dpr

Bangalore
June 23' 1880.

1880 No 695

Lon Br Reference Sheriff
Public Prosecutor

Dated 23rd June

Solicits permission
Berri Advocate to
practice Criminal
practice

Submitted

This letter may be
referred to the Jud. Com. as
to whether practice may prejudicially
interfere with duties arising from
the Pub Pros. being entitled to
defend cases. The grounds of
Mr Lyons's unwillingness interfere
are valid enough but I do not
think he should be taken from
himself to disclose Mr Smith's
appearance Hedley 26/

WJL
24/6 80

586
9/14
6th J.C.

Sir I am directed to
forward copy of a letter dated
from the Pub Pros
Kandidroog with reference to
Mr NS's contention that he is not
held to be permitted to appear
for the defence in criminal
cases I am to enquire that
as been the practice in your
Court & whether any inconvenience practically
arises from Mr N.S.
engaging in private criminal
practice

W.J.L.
26/6

In the Court of the Head Quarter Sub Division
Bangalore District
Dated 21st June 1880
Criminal Case No. 36 of 1880

Government ✠ 1st Timmiah
2nd Bilputri Shunkarappa
3rd Chinnappa
4th Karapiramma
5th Chick Rungamma
6th Pat Moonisappa
7th Gopamma
8th Dottappa
9th Timmasetty
10th Nagi Sunkaramma
11th Bhyrsetty
12th Kadappa
13th Setty Narayne
14th Setty Hannappa

Judgment

✠ ✠ ✠

7. The 1st witness or rather the prosecutor took objection at the first stage of the proceedings to Mr. Reginald Smith conducting the defence on the ground of his having been a public prosecutor. In reply Mr. Smith stated that there was nothing to preclude him from appearing in all Criminal Cases, but explained that he would take up any other Case if instructed by the District Magistrate — and he would be paid for it. that it was not likely he would be engaged in this Case and therefore he was at liberty/

to take up the defence here.

8. It appears to me that if the Public Prosecutor is permitted to appear for defence in Criminal Cases, before Magistrates, and if any such Case is appealed against, the Public prosecutor cannot be instructed and be in a position to uphold convictions which he will be engaged and paid for to contend against in the Court of 1st instance.

9. I think it advisable to forward an extract from this Judgment as to this point for the Consideration and orders of the District Magistrate

x x x

(Signed) Syed Rasoorodeen
Magistrate 1st Class

"Extract"

I
F 110

(General Serial No. 31.)

30 6 84

188 0

From The Govt Prosecutor
Papua Division

To

Dated 11 July

Despatched

Received 13 July -

Enclosures No.

General No.

No.

Applies for
sanction to permit
him to appear in
Criminal cases
when his duties
as Public Prosecu-
tor are not required by
Government

Await Resply to
Telegram of 30 June

6 8 8

14/7

General No: 2240
G 608

From

Mysore Chief Commr's Office
Bangalore, 30 June 1880

To

The Judicial Commr
in Mysore.

Sir,

I am directed by the Chief Commissioner to forward copy of a letter dated 23rd June 1880 from the Public Prosecutor, Nandy=droog, and, with reference to Mr Nepean Smith's contention that he is and should be permitted to appear for the defence in Criminal Cases, I am to inquire what has been the practice in your Court and whether any inconvenience practically arises from Mr Nepean Smith engaging in private Criminal practice.

I have &c,

Secretary.

Y
865
P/10

No. 61

1880.

From

To The Judicial Commissioner
in Mysore,

Dated Bangalore 30 June
Despatched ——— 1st July
Received

Enclosures No. 1 Copy & letter dy 23.6.80 from Govt Reperan Smith

General No. 2240
No. 608

Inquires whether any inconvenience practically arises from Mr. Nepean Smith engaging in private criminal practice.

Shimoga
11th July 1880

To

The Secretary to the Chief Commissioner
Mysore
General Department.

Sir

I beg to lay the following for the favourable Consideration of the Chief Commissioner trusting that Sanction may be graciously accorded to the prayer therein made.

1. In my letter no 3 dated the 8th October 1879 I Solicited Mr Sandford the Judicial Commissioner to permit me to appear in Criminal Cases when my services were not required by the Government, and I wished to make such an application on the information that the Judicial Commissioner had no objections when the Public Prosecutor was not retained by Government in any Criminal Case.

2. I was favoured by the Judicial Commissioner with a reply a true Copy of which I beg herein

to enclose, that abolition from
private practice was not as far
as he was aware, a condition
of my appointment, but that
I should apply to the Government
for instructions

3. I beg therefore the Chief Com-
missioner will be graciously pleased
to grant me permission to
plead in Criminal cases when
I am not required to protect
Government cases

I beg to remain
Sir
Your most obedient & humble Servant

F. Robinson
Public Prosecutor
Wagga Wagga

865
P110

1880.81. No. 95

From The Judl. Commissioners
of Mysore.

To

Secretary to Chief Commissioner, Mysore.
General Department.

Dated 10th July 1880.

Despatched 17th ——

Received 17th ——

Enclosures No.

General No. 777 } 187 —7.
No. 97 }

In reply to his no. 2240 dt 30th June 1880, states that Mr. Pearson Smith Public Prosecutor has often appeared occasionally in this Court on behalf of the Appellant in Criminal Cases & he does not think any inconvenience would practically arise from him engaging in Private Criminal Practice.

An order may be passed accordingly the Nagar PP's office informing the Correspondent to apply to all public prosecutors that they are not debarred by the terms of their agreement from taking private criminal practice except in the classes of cases specified by the J.C. where the terms of their agreement to require them to appear on behalf of Govt.

22

Draft

Bangalore 28th October 1879

cro 2621/82

From

J. D Sandford Esq.
Judicial Commissioner
of Mysore

To

The Public Prosecutor
Mysore Division

Sir

I have the honour to inform you with reference to your No 3 of the 8th inst. that you should apply to Government for instructions on the question of your absenting in criminal cases where your services as Public Prosecutor are not required by Government

2. So far as I am aware the abstention from private practice is not a condition of your appointment

I have the honor to be
Sir
Your most obt Servant
(Signed) J. D. Sandford.
Jud Comr.

"True Copy"

Subramya
Public Prosecutor
Mysore Dn.

No. 777
— 75.

4 6

Bangalore 16th July 1880

From

J. D. Sandford Esquire
Judicial Commissioner
of Mysore

To

The Secretary to the
Chief Commissioner
of Mysore
General Department.

Sir,

In reply to your No. 2240/608 of the 30th Ultimo, I have the honor to state that Mr. Nepean Smith, Public Prosecutor, has appeared occasionally in my Court in behalf of the Appellant in Criminal Cases, and that I do not think any inconvenience would practically arise from him engaging in private Criminal practice, provided that he has not been instructed to appear on behalf of the prosecution.

He

Pro: of the Chief Commissioner of Mysore
in the General Department
judicial dated 22nd July 1880.

Read.

Letter dated 23rd June 1880
from the Public Prosecutor,
Kadapa Division.

Letter No. 2240/G.608 dated
30th June 1880, to the
Judicial Commissioner in
Mysore.

Letter No. 777/75 dated 16th
July 1880 from the Jud. Comr.

Read also —

Letter dated 11th July 1880
from the Public Prosecutor
Nagar Division.

Order: —

It appears to the Chief
Commissioner that Public
Prosecutors in Mysore are

No. 2895–2909
J. 51

Bangalore, 22nd July 1880.

of this agreement, from taking private criminal practice except in the cases of cases specified by the Judicial Commissioner in his letter of the 16th July 1880, where the conditions of this appointment require them to appear on behalf of Government, namely; in prosecutions before the Ch. J. Sessions & in appeals to the full Court from convictions by Sessions Courts; & of course in any other case where he has been instructed to appear on behalf of the Prosecution or consulted by Govt

Yours

Secretary

To The Judicial Comr in Myore.
" Dist & Sessions Judges
" District Magistrates.
" Public Prosecutors.

21/7/80

1880.

Government of Mysore

General Department.

Judicial

To The Judicial Commissioner
" District and Sessions Judges.
" District Magistrates
" Public Prosecutors.

Dated Bangalore, 22nd July
Despatched
Received.

Draft

No 2895-2909
J — 51

50

Recd 12th
22nd July

2 Pages

22

Instructions relative to the Public Prosecutors engaging in private Criminal practice.

80

Proceedings of the Chief Commissioner of Mysore in the General Department, (Judicial),—dated 22nd July 1880.

From Mr. Nepean Smith, Public Prosecutor, Nundydroog Division, To the Secretary to the Chief Commissioner of Mysore, General Department, dated Bangalore, 23rd June 1880.

I have the honor to bring to your notice that on Monday last in a judgment in a criminal case, the Amildar of Anekal *versus* Timmaiya and 13 others, my right to conduct the defence in a purely magisterial case and not within the cognizance of the Sessions Court has been brought into question by Mr. Syed Nasruddin, the 1st Class Magistrate. The prosecutor was the Amildar Abdul Aziz and the case was brought under Sections 145 and 188, I. P. Code, and when I was retained the summons did not shew that this was so as it was headed Chikanna and 13 others *versus* Timmaiya and 13 others, and it only transpired at the hearing that the complainant was the Amildar, the naming of the others being ascribed to a clerical error. My services were not applied for, but on my appearing as simply Advocate for the defence it was objected to.

Up to the present time no such objection has been raised in any court, although I have continued to practise in magisterial cases on many occasions. As a matter of fact, the cases wherever the services of the Government Prosecutor are applied hardly average one per mensem in original prosecutions, so that if the present objection be admitted, I should be shut out of all private criminal practice, which is considerably more remunerative than civil, and on my appointment no such prohibition was made.

In the case above quoted, the parties 14 in number were fined each Rs. 25, so that no appeal would lay, yet Mr. Syed Nasruddin allowed the plea that I should be debarred from all private criminal practice, as it is possible that though not employed by Government in the original criminal court, my services might be required in appeal. In the Judicial Commissioner's Court I have more than once appeared for private individuals in criminal appeals.

To bar a Public Prosecutor on a salary of Rs. 150 only and where sometimes the average from each case at Sessions is not Rs. 10 per case as happened in the present month when 16 cases were tried, of which five were defended by counsel, would deprive him of a great part of his income, as the average rate of fees in magisterial cases is from 50 to 100 Rs. and more.

I may here mention that as a matter of fact I never take up a defence, until I ascertain that Government do not move in the matter, and I would beg to observe that in any such exceptional cases as that mentioned by Mr. Syed Nasruddin it would be open to the court whose conviction was to be sustained to appoint any other Advocate to appear on their behalf, a power which has already been declared to be vested in a District Magistrate.

It is quite inexplicable to me why in the present case my appearance was objected to, as, if I had not appeared, some other Advocate probably more able than myself would have been employed.

It is perhaps allowed me to say that in the case in question I had in the course of my duty to protest against several irregularities, which will be brought to the notice of the Judicial Commissioner.

I would respectfully beg that the present question may be laid before the Chief Commissioner for his consideration.

From the Secretary to the Chief Commissioner of Mysore, General Department, To the Judicial Commissioner in Mysore, No. 2240—G. 608, dated Bangalore, 30th June 1880.

I am directed by the Chief Commissioner to forward copy of a letter dated 23rd June 1880 from the Public Prosecutor, Nundydroog, and, with reference to Mr. Nepean Smith's contention that he is and should be permitted to appear for the defence in criminal cases, I am to inquire what has been the practice in your court and whether any inconvenience practically arises from Mr. Nepean Smith engaging in private criminal practice.

From the Judicial Commissioner of Mysore, To the Secretary to the Chief Commissioner of Mysore, General Department, No. 777—75, dated Bangalore, 16th July 1880.

In reply to your No. 2240—608 of the 30th ultimo, I have the honor to state that Mr. Nepean Smith, Public Prosecutor, has appeared occasionally in my court in behalf of the appellant in criminal cases, and that I do not think any inconvenience would practically arise from him engaging in private criminal practice, provided that he has not been instructed to appear on behalf of the prosecution.

2. He could not of course appear for the defence in any case in which he is retained by the conditions of his appointment on behalf of the Government, *e. g.*, in prosecutions before the Court of Sessions and in appeals to this Court from the conviction of the Court of Session.

Proceedings of the Chief Commissioner of Mysore in the General Department, (Judicial),—dated 22nd July 1880.

From Mr. E. R. Subbarayer, Public Prosecutor, Nagar Division, To the Secretary to the Chief Commissioner of Mysore, General Department, dated Shimoga, 11th July 1880.

I beg to lay the following for the favorable consideration of the Chief Commissioner trusting that sanction may be graciously accorded to the prayer therein made.

1. In my letter No. 3, dated the 8th October 1879, I solicited Mr. Sandford, the Judicial Commissioner, to permit me to appear in criminal cases when my services were not required by the Government, and I was led to make such an application on the information that the Judicial Commissioner had no objections when the Public Prosecutor was not retained by Government in any criminal case.

2. I was favored by the Judicial Commissioner with a reply, a true copy of which I beg herein to enclose, that abstention from private practice was not, as far as he was aware, a condition of my appointment, but that I should apply to the Government for instructions.

3. I beg therefore the Chief Commissioner will be graciously pleased to grant me permission to appear in criminal cases when I am not required to protect Government cases.

No. 2895-2909—J. 51, DATED BANGALORE, 22ND JULY 1880.

ORDER.—It appears to the Chief Commissioner that Public Prosecutors in Mysore are not debarred by the terms of their agreement, from taking private criminal practice except in the classes of cases specified by the Judicial Commissioner in his letter of the 16th July 1880, where the conditions of their appointment require them to appear on behalf of Government, namely ; in prosecutions before the Courts of Sessions and in appeals to the Judicial Commissioner from convictions by Sessions Courts ; and of course in any other case where he has been instructed to appear on behalf of the prosecution or consulted by Government.

W. J. CUNINGHAM,
Secretary.

To—The Judicial Commissioner in Mysore. 3
" District and Sessions Judges. / 11
" District Magistrates. / 11
" Public Prosecutors. / each

32 desp.
1 with draft
8 to f. Records
8 to reserve, sent to fl. Records

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